IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

Crl.MC.No. 572 of 2007()

(ST. NO. 161/2004 of JUDICIAL FIRST CLASS MAGISTRATE COURT III, THIRUVANANTHAPURAM.)

PETITIONER: ACCUSED

SUBRAMANIAN P.,
MAVILA PUTHEN VEEDU, PAPPANAMCODE P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.RAJU ABRAHAM PULPARA

RESPONDENTS: COMPLAINANT & STATE

---

1. M.SUDHEESH KUMAR,
KAVUVILA VEEDU, PERINGAMALA, KALLIYOOR P.O.,
THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

= = = = = = = = = = = = = =

Crl.M.C. No.572 Of 2007

= = = = = = = = = = = = = =

Dated this the 7th day of August, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instrument Act. According to the petitioner proceedings initiated against him totally lacks bona fides. Two blank signed cheques were allegedly issued by the petitioner to the brother of the 1st respondent as security. A notice of demand was issued by the said brother to the petitioner demanding an amount of Rs.25,000/- on the strength of one of those two cheques. A copy of that notice is produced as Annexure II. The said notice was replied to by Annexure III reply notice through the counsel. A demand was made in that reply that the two cheques be returned accepting the transaction as closed. No further action was taken by the brother of the 1st respondent after receipt of Annexure III notice. That Annexure III notice was issued on 11.07.01. Long after on 27.1.04, respondent herein staked an independent claim under the other of those two cheques. That notice was received by the petitioner. But unfortunately the petitioner did not send a formal reply. According to the petitioner, he had met the 1st

respondent and explained to the 1st respondent the previous proceedings which ended with Annexure III reply notice. In the hope that the 1st respondent shall not initiate any action , the petitioner did not take any further action.

2. The petitioner now finds that in the absence of reply to Annexure IV notice, proceedings were initiated against him before the learned Magistrate under Section 138 of the Negotiable Instrument Act. The petitioner entered appearance through counsel. But the petitioner was not able to raise sufficient sureties before the learned Magistrate and claim bail. He applied for exemption from personal appearance. The said request was not allowed by the learned Magistrate. The learned Magistrate has now issued a non bailable warrant against the petitioner. The petitioner in these circumstances prays that it may be directed that the non bailable warrant should not be executed. He further prays the petitioner may be permitted to appear before the learned Magistrate and claim bail on his own bond. It is further prayed that he may be permitted to appear through counsel also. Notice was issued to the respondents. Notice was given and it was served on the counsel for the 1st respondent also, but there is no representation for the 1st respondent. Exceptional circumstances call for exceptional

response from the Court. This I am satisfied is one such case. I am satisfied in these circumstances, that the prayers made by the petitioner, which is exceptional in nature can certainly be granted.

3. This petition is in these circumstances allowed. The following directions are issued.

i) The non bailable warrant issued against the petitioner shall not be executed till 20.8.07.

ii) On or before that date the petitioner can appear before the learned Magistrate and the learned Magistrate shall release the petitioner on his own bond for appropriate amount.

iii) The petitioner can make an application for exemption from personal appearance before the learned Magistrate. The learned Magistrate shall allow such request and permit the petitioner to appear through counsel on all dates of posting unless the learned Magistrate issues specific directions for appearance of the petitioner personally for any specific purpose.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

sj